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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of  
TRINITY BROADCASTING OF FLORIDA, INC.  
For Renewal Of License of Station  
WHFT(TV), Miami, Florida  
and  
GLENDALE BROADCASTING COMPANY  
For Construction Permit  
Miami, Florida

MM Docket No. 93-75  
File No. BRCT-911001LY

File No. BPCT-911227KE

PETITION FOR RECONSIDERATION

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## TABLE OF CONTENTS

SUMMARY. . . . .	ii
BACKGROUND. . . . .	2
A.    POLICY BACKGROUND FOR THE COMMISSION'S DESIGNATION ORDER IN THIS PROCEEDING . . . . .	2
B.    THE TRINITY PROCEEDING AND THE CONSEQUENCES OF THE DESIGNATION ORDER . . . . .	5
ARGUMENT . . . . .	8
A.    The Commission Should Reconsider Its Designation Order Because It Is Inconsistent With the Commission's Statutory Obligations and Constitutes an Arbitrary and Capricious Departure From Its <u>Jefferson Radio</u> and <u>Grayson</u> Policies . . . . .	9
B.    The Commission Arbitrarily and Capriciously Fails to Articulate How the Decision Not to Designate the "Uninvolved" Licenses for Hearing and Restrict Their Transferability is in the Public Interest . . . . .	14
C.    The Commission Can Afford Relief to the Viewers of the Undesignated Stations Consistent With the Principles of <u>Grayson</u> . . . . .	17
CONCLUSION . . . . .	22

## SUMMARY

The Commission's Designation Order constitutes a final determination that the pendency of unresolved character issues in this proceeding will not be considered in determining whether to grant applications to renew or transfer other licenses held by Trinity Broadcasting Network and its affiliates ("Trinity"), and National Minority TV, Inc. ("NMTV"). The Designation Order sets Trinity's Miami station for hearing, inter alia, on the issues of (i) whether Trinity, which is not minority-controlled, is exercising de facto control over NMTV, which is nominally minority-controlled, and (ii) whether Trinity and NMTV abused the Commission's processes by using NMTV to evade the multiple ownership rules and/or by using NMTV to improperly claim minority

which they may not be entitled to hold. In failing to set Trinity's and NMTV's other licenses for hearing despite finding that the alleged wrongdoing could possibly affect the transferability of those licenses, the Designation Order permits Trinity and NMTV to profit further from their alleged wrongdoing.

In the Designation Order, the Commission also breaks with its precedents by failing to carefully balance the competing public interest considerations in reaching the decision not to designate the other licenses for renewal hearings. The Designation Order therefore fails both to serve the public interest and to deter unlawful conduct on the part of broadcast licensees.

The Commission's decision was made without the opportunity for input from viewers in communities served by the stations not designated. While the Commission has several options available to it to obtain such input, it would be most consistent with the Commission's existing policies and the public interest for the Commission to designate Trinity's and NMTV's other licenses for early renewal hearings at this time.

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PETITION FOR RECONSIDERATION

Petitioners League of United Latin American Citizens, (hereinafter "LULAC"),<sup>1</sup> on behalf of its individual members, and the Spanish American League Against Discrimination ("SALAD") respectfully request the Commission, pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106, to reconsider its Hearing Designation Order, FCC 93-148 (hereinafter "Designation Order") in the above referenced case, released April 7, 1993.

The Designation Order constitutes a final Commission decision on which a petition for reconsideration must be entertained. See pp. 8-9, infra. Petitioners are adversely affected by this order and have standing to seek its reconsideration.<sup>2</sup> See attached declarations. Petitioners

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<sup>1</sup> LULAC's purpose is to promote civil rights and economic opportunities for Hispanics throughout the United States.

<sup>2</sup> SALAD's standing in this proceeding has already been established. Designation Order at ¶ 42. LULAC has standing to bring this petition under the standards of American Legal Found. v. FCC, 808 F.2d 84, 89 (D.C. Cir. 1987). As individuals

submit that the Commission's decision violates its longstanding policies and severely impairs the public interest. Thus, reconsideration is warranted.

### **BACKGROUND**

#### **A. POLICY BACKGROUND FOR THE COMMISSION'S DESIGNATION ORDER IN THIS PROCEEDING**

A broadcast licensee whose qualifications to hold its license are challenged in a renewal proceeding generally may not transfer or assign that license during the pendency of that

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residing in the areas served by television stations owned and operated by Trinity affiliates and National Minority TV, Inc. ("NMTV"), LULAC's members have standing to seek reconsideration of the Commission's order. Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994, 1000-04 (D.C. Cir. 1966).

Petitioners have been conclusively barred from raising the issues designated in this proceeding in any subsequent petition to deny transfer or assignment of other Trinity stations. Thus, they have been deprived of the opportunity to obtain the best practicable service because of the Commission's decision not to designate these other licenses for renewal proceedings and its determination that Trinity and its affiliates are free to dispose of licenses during the pendency of this proceeding.

Petitioners have also been deprived of the diversity and increased competition that would have resulted had Trinity and NMTV not been in violation of the multiple ownership rules for several years. Furthermore, Petitioners have been precluded from the benefit of the greater programming diversity that would have resulted from distress sales of these stations to minority applicants that could have arisen had these licenses been properly designated for hearing. Therefore, Petitioners are adversely affected by the Commission's decision.

LULAC has good cause for not participating earlier in this proceeding because its members had no injury from, and hence no interest in, this proceeding until the Designation Order was issued. See Argument Part C, infra. Furthermore, LULAC could not have foreseen that the Designation Order would modify the Commission's traditional application of the Grayson and Jefferson Radio policies. Thus, LULAC had good cause for not participating earlier in this proceeding and is entitled to bring this Petition. SALAD has participated in the earlier stages of this proceeding.

proceeding. This is known as the Jefferson Radio policy. Jefferson Radio Co., Inc. v. FCC, 340 F.2d 781 (D.C. Cir. 1964) affirmed the Commission's policy that "assignment of broadcast authorization will not be considered until the Commission has determined that the assignor has not forfeited the authorization." Id. at 783. Essentially, the licensee "has nothing to transfer unless and until he has established his own qualifications." Northland Television, Inc., 42 R.R.2d 1107, 1110 (1978). This policy "is based on the premise that permitting a licensee whose qualifications are in question to assign the station freely would undermine the deterrent impact of the renewal process on future misconduct by the licensee in question and others by permitting the licensee to be fully compensated for the license despite the alleged wrongdoing." RKO General, Inc., 3 FCC Rcd 5057, 5060-61 (1988).

A corollary to this policy is that "if the Commission designates a license application of a multiple owner for hearing, the Commission will simultaneously decide whether that applicant can sell other stations. In making that decision . . . . the basic issue will be whether there is a substantial likelihood that the allegations warranting designation of one station for hearing bear upon the operation of the other stations." Grayson Enterprises, Inc., 79 FCC 2d 936 (1980), modified, Transferability of Broadcast Licenses, 53 RR 2d 126 (1983).

The Commission will decide this issue against the licensee if its alleged misconduct is so fundamental to its operation that

it is relevant to its qualifications to hold any station license, Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1123-24 (1986), amended, 5 FCC Rcd 3252 (1990), modified, 6 FCC Rcd 3448 (1991) ("Character Qualifications"), or is "serious enough to possibly affect the transferability of the multiple owner's other stations...." Id. at 1124. If the Commission cannot determine that the other stations are not involved in the alleged misconduct, it will designate all the multiple owner's licenses for hearing and consequently restrict their transferability.<sup>3</sup>

If the Commission decides that the alleged misconduct is limited to the station in question, it will permit the stations it determines are "uninvolved" to be transferred freely and without condition. Transferability of Broadcast Licenses, 53 RR 2d at 126. Once the Commission has determined that the other licenses are uninvolved, the licensee is entitled to rely on the finality of the Commission's decision not to place limitations on the transfer of those other licenses in seeking to renew or assign them. RKO General, Inc., 1 FCC Rcd 1081, 1084 (1986), recon. granted in part and denied in part, 2 FCC Rcd 113 (1987). As a consequence, if the licensee seeks to renew or assign those

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<sup>3</sup> Under Grayson, the limitation on transferability could be expressed by attaching a condition on the renewal of the multiple owner's other stations. The Commission's 1983 modification of Grayson generally eliminated this approach. Subsequent to this modification, the Commission has either designated the owner's other licenses for a renewal hearing or permitted them to be transferred freely. See Character Qualifications, 102 FCC 2d at 1224; Transferability of Broadcast Licenses, 53 RR 2d 126 (1983); James S. Rivers, 48 Fed. Reg. 8585 (1983).



other licenses during the pendency of the first proceeding, the Commission will reject an objection raised by the station's viewers or listeners that serious issues remain to be resolved in that first proceeding that would possibly affect the renewability or transferability of the "uninvolved" license. Id.<sup>4</sup>

**B. THE TRINITY PROCEEDING AND THE CONSEQUENCES OF THE DESIGNATION ORDER**

On March 16, 1993, the Commission designated for hearing the application of Trinity Broadcasting of Florida, Inc. ("TBF") for renewal of its license for station WHFT(TV), Channel 45, Miami, Florida, and the mutually exclusive application of Glendale Broadcasting Company ("Glendale") for a new commercial television station to operate on Channel 45. Designation Order ¶ 1. Glendale and SALAD have alleged that TBF's President and director, Paul F. Crouch, and/or Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("Trinity") have used National Minority TV, Inc. ("NMTV") as a front to evade the Commission's multiple ownership rules.

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<sup>4</sup> In RKO, the Commission held that because it had placed no limits on the transferability of one of RKO's stations when it designated another for hearing, the licensee could transfer freely and without condition the uninvolved broadcast license. In approving an assignment of the other licenses, the Commission specifically held that RKO "was entitled to rely on the absence of an express limitation" on the transfer of the uninvolved license. 1 FCC Rcd at 1084. The petitioners in RKO objected to the assignment because serious questions concerning RKO's qualifications remained at issue in the related proceeding. The Commission rejected the challenge, however, because "[n]o party previously [i.e., following the designation order] challenged the absence of a limit on the transferability of the station." Id.

Section 73.3555(d)(1) of the Commission's regulations prohibits any party from owning more than twelve television stations which are not minority-controlled. Glendale and SALAD allege that Trinity, which is not minority controlled, essentially controls nearly every aspect of the operations of NMTV, which, is nominally minority controlled. Consequently Trinity would have been in violation of Section 73.3555(d)(1) from June 1987 until December 1991 because Trinity and its affiliates owned twelve television stations while NMTV owned up to two stations during this period. Designation Order ¶ 4 n.5.<sup>5</sup>

The Commission set this issue for hearing, finding:

The evidence suggests that [Trinity] and its employees may control nearly every aspect of NMTV's operation. Consideration of [Trinity]'s significant involvement in NMTV's finances, programming, and personnel, as well as [Trinity]'s apparent ability to dominate NMTV's board of directors leads to the conclusion that appropriate issues must be specified in this proceeding.

Designation Order ¶ 37. It also specified for hearing an abuse of process issue to determine whether Trinity used NMTV as a surrogate to apply for stations. The Commission concluded:

[I]f [Trinity] and/or Paul Crouch controlled NMTV from the outset and that fact had been disclosed, NMTV would not have been entitled to minority preference in

a minority lottery preference or to circumvent the Commission's multiple ownership rules.

Id. at ¶ 38.

Although the Commission designated TBF's license for WHFT(TV) for hearing on these issues, it specifically declined to call for early renewals or institute revocation proceedings against other licenses held by NMTV, Trinity, or its affiliates.

The Commission determined:

While the outcome of this proceeding could have implications for all stations licensed to NMTV, [Trinity] and its affiliates, we believe that there is no need to designate those licenses for hearing at this time. Although the issues being specified in this case are not limited to the operation of WHFT(TV), we are

unresolved in this proceeding will not be entertained. RKO, 1 FCC Rcd at 1084 (licensee entitled to rely on Grayson determination). The Commission reserved the right, however, to take further action against NMTV, Trinity and its affiliates if the character issues designated in this proceeding are ultimately resolved against them. Designation Order ¶ 45.

#### **ARGUMENT**

The Commission's decision to permit NMTV, Trinity and its affiliates to transfer their licenses not designated for hearing freely and without restriction constitutes a final determination that the pendency of unresolved character issues in this proceeding will not be considered in determining whether to approve the renewal or assignment of any of these licenses. See RKO, 1 FCC Rcd at 1084. Petitioners therefore must seek reconsideration of the Designation Order to obtain review of this final determination.<sup>7</sup> As a consequence, this Petition is a proper petition for reconsideration of a final Commission determination under section 1.106<sup>8</sup> and must be entertained.<sup>9</sup>

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<sup>7</sup> See also Coalition for the Preservation of Hispanic Broadcasting v. FCC, 931 F.2d 73 (D.C. Cir.) (en banc), cert. denied, 112 S. Ct. 298 (1991) (in order to exhaust its administrative remedies, an aggrieved party must utilize "the earliest available corrective step").

<sup>8</sup> "Petitions requesting reconsideration of a final Commission action will be acted on by the Commission." 47 C.F.R. § 1.106(a)(1) (1992). Furthermore, the broad policy implications of the Commission's decision in the Designation Order make it appropriate for the full Commission's consideration.

<sup>9</sup> Other Commission precedents also suggest the propriety of this petition for reconsideration. The designation order fails to implement standard Commission policies of wide interest

This Petition should be granted because the Designation Order is in error for the reasons set forth below.

**A. The Commission Should Reconsider Its Designation Order Because It Is Inconsistent With the Commission's Statutory Obligations and Constitutes an Arbitrary and Capricious Departure From Its Jefferson Radio and Grayson Policies**

Under existing Commission policy, if the Commission finds that "the charges [in a proceeding] are serious enough to possibly affect the transferability of the multiple owner's other

specified in this case are not limited to the operation of WHFT(TV)...." Designation Order ¶ 45 (emphasis added). This finding is tantamount to a finding that the charges designated for hearing in this proceeding could "possibly affect the transferability of" all Trinity affiliated stations.

Commission precedent indicates that it will only permit a multiple-owner's other stations to be transferable freely and without condition if it makes an affirmative determination that the other stations are uninvolved in the allegations designated for hearing. See Transferability of Broadcast Licenses, 53 RR 2d at 126 (Commission must decide that issues raised are limited to stations in question); RKO, 1 FCC Rcd at 1085 (affirmative finding of no substantial likelihood allegations would bear on the operation of other stations). Here, however, the Commission merely determined that it could not conclude at this time that the issues designated for hearing affect the transferability of the other licenses and could not conclude that the other licenses were uninvolved, yet permitted the free transferability of the other licenses. See Designation Order ¶ 45. Thus, the Commission's decision not to designate these other stations for hearing departs from the clearly expressed terms of its existing Grayson policy because (i) it permitted the free transferability of NMTV and Trinity's other licenses when it made findings that require it to restrict their transferability, and (ii) it resolved doubts about character qualifications in favor of Trinity when previously it would have resolved those doubts

against the licensee.<sup>10</sup> The Commission, to borrow Justice Scalia's metaphor, having been shown a good deal of smoke and having undertaken to investigate a possible fire, has effectively declared that it will not pull Trinity's other licenses out of it until well after they may already have been consumed. See Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 397 (D.C. Cir. 1985).

The Commission's policy requiring an affirmative determination of the uninvolved of a multiple-owner's other licenses is consistent with, if not mandated by, the Commission's obligations under section 309(d)(2) of the Communications Act of 1934, as amended. This section requires the Commission to set for hearing any license application about which substantial and material questions are presented, "or if the Commission for any reason is unable to find that grant of the application would be consistent with [the public interest]." 47 U.S.C. § 309(d)(2) (1988) (emphasis added). In the Designation Order the Commission, despite its inability to conclude that declaring the free transferability of Trinity's other licenses is in the public interest, nonetheless made this declaration. This departure from ~~the existing Grayson policy therefore is inconsistent with the~~

The Commission's departure from its Grayson policy is also arbitrary and capricious because it is unannounced, unsupported, and unwarranted. Its unsoundness can be demonstrated by examining the Jefferson Radio principles which underlie the Grayson policy. There are only three general exceptions to Jefferson Radio. The Commission has described these as:

(1) assignment by a seriously ill licensee, Cathryn C. Murphy, 42 F.C.C. 2d 346 (1973); (2) assignment by a licensee in bankruptcy, Second Thursday Corp., 22 F.C.C. 2d 515, recon. granted, 25 F.C.C.2d 112 (1970); and (3) assignment to a minority-owned entity under the Commission's distress sale policy, Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979 (1978); Clarification of Distress Sale Policy, 44 R.R.2d 479 (1978).

RKO, 3 FCC Rcd at 5061. These exceptions are justified because (i) the public interest would be best served overall by approval of transfers in these circumstances and (ii) the deterrent impact of the policy would not be undermined because the party engaged in the alleged misconduct would not profit from it. See generally id. at 5061-62. The distress sale exception, for instance, serves the public interest by fostering minority ownership and thereby program diversity and by saving Commission resources by avoiding lengthy hearings. It also "preserv[es] the Commission's policy of deterrence by limiting the purchase price of the station to 75 percent of fair market value." Id. at 5061, citing Lee Broadcasting Corp., 76 FCC 2d 462 (1980), recon.



denied, 50 R.R.2d 1233 (1982) (establishing the 75 percent limitation).<sup>11</sup>

The Commission has also made individualized exceptions to the Jefferson Radio policy when, "after a hard look at the record, [it finds] compelling reasons for doing so" based on these same policy considerations. Id. See, e.g., RKO, 3 FCC Rcd at 5063 (settlement found to be in public interest because 23 years of litigation involving multiple licenses and 161 competing applications brought to end and deterrence preserved because RKO received less than full-market-value for its stations and had already lost valuable license); Spanish International Communications Corp., 2 FCC Rcd 3336 (1987) (public interest served by expeditious transfer of stations to non-alien owners and deterrence served because violation only technical and unaccompanied by misrepresentations), aff'd sub nom. Coalition for the Preservation of Hispanic Broadcasting v. FCC, 931 F.2d 73 (D.C. Cir.) (en banc), cert. denied, 112 S. Ct. 298 (1991).

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<sup>11</sup> The bankruptcy exception likewise serves these policy ends.

[T]he public interest benefits stem from the facts that (1) the transfer furthers the ends of the bankruptcy law by protecting innocent creditors, and (2) the transfer takes the station from the hands of a trustee in bankruptcy who may be ill-equipped to operate the station. The Commission's deterrence policy is preserved because the licensee's creditors, not the accused wrongdoers, derive the benefit from the transaction.

RKO, 3 FCC Rcd at 5061.

No such exemption is warranted in this case. Permitting Trinity to assign its licenses and acquire new licenses cannot be countenanced by the policies which underlie both Jefferson Radio and the exceptions to it. First, there is no basis for presuming that assignment or renewal of any of Trinity's licenses will serve the public interest. Second, and most importantly, the deterrent to licensee misconduct collapses if Trinity is permitted freely to transfer its licenses. If it is proven that Trinity violated the Commission's multiple ownership limitations by abusing the minority ownership rules, then Trinity has already illicitly profited from the sales of KMLM-TV and WLXI(TV).

Designation Order ¶ 4 n.5. Trinity is now in a position to receive full market value from the sale of eleven more licenses to which it may have no legal entitlement. Trinity should not be permitted to add to such a windfall. Moreover, rewarding Trinity for its misconduct would only encourage multiple owners to flout the Commission's regulations. Therefore, the Commission should reconsider the Designation Order insofar as it permits the free transferability of Trinity's other licenses during the pendency of this proceeding.

**B. The Commission Arbitrarily and Capriciously Fails to Articulate How the Decision Not to Designate the "Uninvolved" Licenses for Hearing and Restrict Their Transferability is in the Public Interest**

Although the Commission has recognized that "even a designation of misrepresentation and lack of candor issues against a multiple licensee does not necessarily trigger a restriction on transfers" of its "uninvolved" licenses, "[t]he

imposition of restrictions on the transfer of such uninvolved licenses turns upon a careful balancing of competing public interest considerations...." Cellular System One of Tulsa, 102 FCC 2d 86, 90-91 (1985) (emphasis added). See also Straus Communications, Inc. v. Federal Broadcasting Co., 64 RR 2d 556 (1987) (Commission must "'balance its long-term interest in deterrence with the immediate interest in assuring good broadcast service to the particular community involved'") quoting Grayson, 79 FCC 2d at 939.

In the Designation Order in this proceeding, the Commission has engaged in no such "careful balancing." Indeed, it wholly fails to articulate either the public interest factors it has considered or the relative weights it has assigned to them in this determination. It simply makes this determination, which directly affects viewing communities who are not even represented in this proceeding, with the conclusory statement that it is "not prepared at this time to conclude that they are so fundamental that they would affect the qualifications of NMTV, [Trinity], or its affiliates to hold any station license." Cf. Cellular System One of Tulsa, 102 FCC 2d at 91 (Commission weighs deterrence and efficiency interests at some length); RKO, 1 FCC Rcd at 1084 (Commission weighs deterrence against other factors).

Had the Commission engaged in this careful balancing, it would have concluded that the public interest would have been best served by designating the "uninvolved" licenses for hearing. First, there is no justification for finding that Trinity's

conduct in this case does not affect the transferability of all  
of its licenses. The misconduct of which Trinity is accused was

of process issue in this proceeding and apply to Trinity's and NMTV's qualifications to hold any of their licenses. Cf. RKO, 1 FCC Rcd at 1085 and n.35 (fraudulent billing issue by former radio network designated for one license but did not directly implicate station sought to be assigned because Commission rule in question had been deleted subsequent to the designation).

Finally, the Commission's goal of deterring wrongdoing is completely disserved by its failure to designate the other licenses for hearing. In RKO the Commission held that its deterrence interests were served because RKO continued to run the risk that it would lose all or some of its other licenses in the numerous proceedings in which it was involved at the time and, indeed, had already lost one license. Id. at 1084-85 and n.33. In this proceeding, on the other hand, the policy of deterring wrongdoing collapses completely. As discussed previously, if it is proven that Trinity violated the Commission's multiple ownership limitations by manipulating the minority ownership rules, then Trinity has already illicitly profited from the sales of KMLM-TV and WLXI(TV). Designation Order ¶ 4 n.5. The Commission must limit Trinity's ability to continue to exploit this past wrongdoing.

**C. The Commission Can Afford Relief to the Viewers of the Undesignated Stations Consistent with the Principles of Grayson**

In making Grayson determinations, the Commission is in the awkward position of attempting to gauge how best to serve the interests of communities who are almost certain not to be

represented in the proceeding in which that determination is made. Viewers and listeners simply cannot be expected to monitor and represent themselves in renewal and revocation proceedings for broadcast licenses all over the country on the suspicion that a licensee who owns or controls a local broadcast station will be afforded a final, conclusive presumption that the local station is untainted. To expect such hyper-vigilance by viewing and listening communities is to ignore reality.<sup>12</sup> It is also to ignore the difficulty a potential objector might have in demonstrating the requisite "interest" in a proceeding for standing purposes. If, for instance, a viewer of WNMT-TV in Portland, Oregon had attempted to predicate its interest in this proceeding (prior to the Designation Order) on the grounds that another party might produce evidence that NMTV is a front for Trinity and that the Commission would award Trinity a conclusive presumption that the WNMT-TV license is untainted, the Commission would almost assuredly have rejected such an interest in the proceeding as speculative or premature at best, and paranoid at worst. Thus, under the Grayson policy the Commission does not only make determinations about "uninvolved" licenses, it makes determinations about uninvolved viewing communities.

Restricting transferability of a multiple owner's other licenses typically entails designating the other licenses for early renewal hearings. As discussed previously, designating all

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<sup>12</sup> This is especially true given that licensees are only required to provide notice locally, not globally. See generally 47 C.F.R. § 73.3580 (1992).

the licenses for hearing at this time would best serve the goals of Jefferson Radio and Grayson. It would serve the public interest by facilitating the involvement of the viewing communities of the other licenses in gauging the effects of the allegations set for hearing on those licenses. The Commission, in modifying Grayson, noted that this approach reduces the burdens on multiple license owners by permitting them to defend their conduct in one proceeding, rather than in a number of separate proceedings. Character Qualifications, 102 FCC 2d at 1224. This consideration also applies to groups like LULAC, whose limited resources in protecting their members' interests would be needlessly strained by requiring their involvement in a multitude of licensing proceedings.

This avenue would also be more consistent with the Commission's goals of deterring wrongdoing because it would foreshorten the opportunity for Trinity to benefit from its alleged wrongdoing by continuing to exploit licenses to which it is not entitled. It would also preclude their ability to receive additional reward from their exploitation of the multiple ownership rules.<sup>13</sup> Indeed, had the Commission properly applied Grayson, it would have enhanced the goal of increasing diversity in broadcasting by expanding the pool of stations eligible for minority distress sale treatment. Ironically, the Commission's

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determinations in the Designation Order permit Trinity to benefit from its subversion of this goal through its manipulation of the Commission's minority ownership policies. These considerations make it clear that the proper course of action is for the Commission to designate the other licenses for early renewal hearings.

The Commission, however, has other avenues open to it should it continue to believe that designation of the other licenses for renewal hearings is inappropriate. The Commission's orders modifying Grayson (see note 2, supra) generally eliminate the approach of conditioning license renewals and transfers on the outcome of a hearing on a multiple owner's other license(s). These orders, however, suggest that the conditioning option is foreclosed only if the Commission can affirmatively determine that the stations not designated are "uninvolved" in the misconduct issues specified for hearing. If the Commission cannot determine that the multiple owner's other stations are "uninvolved," as appears to be the case here, the orders modifying Grayson leave open the possibility that the Commission could condition the renewal or transfer of the other stations upon the outcome of the hearing rather than designate all of the multiple-owner's licenses for renewal hearings. See Transferability of Broadcast Licenses 53 RR 2d at 126. See also Character Qualifications, 102 FCC 2d at 1224-25 (use of phrase "Commission action to restrict transfers on assignments" rather than "designation for hearing" in paragraph 94 implies that



Commission may take action to restrict transfers without designating other licenses for hearing). Nor do these orders foreclose the Commission from simply restricting the transferability of the other stations for the duration of this proceeding. While such measures are less appropriate than designation of the other licenses for renewal in this proceeding for the reasons discussed above, they would mitigate the harm to viewers of the undesignated stations by permitting them to raise the issues specified in the Designation Order in future proceedings.

Finally, the Commission could simply overrule its holding in RKO, 1 FCC Rcd at 1084, that unresolved qualification issues may not be raised as objections to the assignment or renewal of undesignated licenses. Assuring the viewing communities of undesignated stations the opportunity to protect their interests at the appropriate juncture, rather than prejudging the matter when they are foreclosed from participating, would remove the inequities of the Grayson policy as applied in this case.